

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Nos.: EB-11-SE-061; EB-10-SE-126;
)	EB-08-TC-6092
)	
Ztar Mobile, Inc.)	Acct. No.: 20123210023
)	
)	FRN: 0010723591
)	

ORDER

Adopted: May 11, 2012

Released: May 11, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Ztar Mobile, Inc. (Ztar). The Consent Decree resolves and terminates the Bureau's investigations into Ztar's compliance with Section 20.19(d)(3)(ii) of the Commission's rules (Rules)¹ concerning the deployment of digital wireless hearing aid-compatible handsets and with Section 222 of the Communications Act of 1934, as amended (the Act),² Section 64.2009(e) of the Rules,³ and the *EPIC CPNI Order*,⁴ concerning the filing of an annual Customer Proprietary Network Information certification.⁵

2. The Bureau and Ztar have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigations. In the absence of new material evidence relating to this matter, we conclude that our investigations raise no substantial or material questions of fact as to whether

¹ 47 C.F.R. § 20.19(d)(3)(ii).

² 47 U.S.C. § 222.

³ 47 C.F.R. § 64.2009(e).

⁴ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953, para. 51 (2007) (*EPIC CPNI Order*); *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

⁵ See *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enf. Bur. 2009).

Ztar possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,⁶ and Sections 0.111 and 0.311 of the Commission's Rules,⁷ the Consent Decree attached to this Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned investigations **ARE TERMINATED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Kevin Haddad, President, Ztar Mobile, Inc., 16 Village Lane, Suite 250, Colleyville, Texas 76034, and to David Wilkie, Counsel to Ztar Mobile, Inc., 5501A Balcones Drive, Austin, Texas 78731.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁶ 47 U.S.C. §§ 154(i), 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Ztar Mobile, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigations into possible violations of Section 20.19(d)(3)(ii) of the Commission's rules,¹ pertaining to the deployment of digital wireless hearing aid-compatible handsets, and Section 222 of the Communications Act of 1934, as amended,² Section 64.2009(e) of the Commission's rules,³ and the *EPIC CPNI Order*,⁴ pertaining to the filing of an annual Customer Proprietary Network Information certification.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Ztar is subject by virtue of its business activities, including but not limited to, the Hearing Aid Compatibility Rules and the CPNI Rules.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

¹ 47 C.F.R. § 20.19(d)(3)(ii).

² 47 U.S.C. § 222.

³ 47 C.F.R. § 64.2009(e).

⁴ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953, para. 51 (2007) (*EPIC CPNI Order*); *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

- (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
- (g) “Covered CPNI Employees” means all employees and agents of Ztar who perform, or supervise, oversee, or manage the performance of, duties that relate to Ztar’s responsibilities under the CPNI Rules.
- (h) “Covered HAC Employees” means all employees and agents of Ztar who perform, or supervise, oversee, or manage the performance of, duties that relate to Ztar’s responsibilities under the Hearing Aid Compatibility Rules.
- (i) “CPNI” means customer proprietary network information as defined in 47 U.S.C. § 222(h)(1).
- (j) “CPNI Investigation” means the investigation commenced by the Bureau’s September 5, 2008 letter of inquiry⁵ regarding Ztar’s apparent violation of the CPNI Rules by failing to file a compliant CPNI certification.
- (k) “CPNI Rules” means Section 222 of the Act, Section 64.2009(e) of the Rules, the *EPIC CPNI Order*, and other Communications Laws relating to a telecommunications carrier’s use of CPNI.
- (l) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (m) “HAC Investigation” means the investigation commenced by the Bureau’s October 27, 2010 letter of inquiry⁶ regarding Ztar’s deployment of digital wireless hearing aid-compatible handsets.
- (n) “Hearing Aid Compatibility Rules” means Section 20.19 of the Rules and other Communications Laws governing digital wireless hearing aid compatibility, such as the Rules governing the design, selection, or acquisition of wireless handsets and the marketing or distribution of such handsets to consumers in the United States.
- (o) “Investigations” means collectively, the HAC Investigation and CPNI Investigation.
- (p) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Ztar to implement the Compliance Plan.
- (q) “Parties” means Ztar and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “Ztar” means Ztar Mobile, Inc. and its predecessors-in-interest and successors-in-interest.

⁵ Letter from Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Ztar Mobile, Inc. (Sept. 5, 2008) (on file in EB-08-TC-6092).

⁶ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Kevin Haddad, President, Ztar Mobile, Inc. (Oct. 27, 2010) (on file in EB-10-SE-126).

II. BACKGROUND

A. Hearing Aid Compatibility

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.⁷ The Commission established technical standards for radio frequency interference (the M rating) and inductive coupling (the T rating)⁸ that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes, respectively. For each of these standards, the Commission further established deadlines by which manufacturers and service providers must offer specified numbers or percentages of digital wireless handsets per air interface⁹ that are compliant with the relevant standard.¹⁰ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the Hearing Aid Compatibility Rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.¹¹

⁷ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Act, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787, para. 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

⁸ As subsequently amended, Section 20.19(b)(1) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document "American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids," ANSI C63.19-2006 (June 12, 2006) or ANSI C63.19-2007 (June 8, 2007). Beginning January 1, 2010, a newly certified handset must meet at least an M3 rating under ANSI C63.19-2007 to be considered hearing aid-compatible for radio frequency interference. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard as set forth in ANSI C63.19-2006 or ANSI C63.19-2007, and beginning January 1, 2010, it is deemed hearing aid-compatible for inductive coupling if it meets at least a T3 rating under ANSI C63.19-2007. 47 C.F.R. § 20.19(b)(2). Grants of certification issued before June 6, 2008, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. A recently adopted further amendment to Section 20.19(b) will permit manufacturers to test handsets for hearing aid compatibility using the 2011 version of the ANSI standard (ANSI C63.19-2011) as an alternative to ANSI C63.19-2007. See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, DA 12-550 (WTB/OET rel. Apr. 9, 2012).

⁹ The term "air interface" refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

¹⁰ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; 47 C.F.R. § 20.19(c), (d).

¹¹ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These handset deployment requirements do not apply to service providers and manufacturers that meet the *de minimis* exception. The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements, and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e). Effective September 10, 2012, the *de minimis* exception will not be available to manufacturers or mobile service providers that do not meet the definition of a "small entity" beginning two years after their initial offerings. 47 C.F.R. § 20.19(e)(1)(ii); see also *Amendment of the*

3. On January 11, 2010, Ztar submitted its annual hearing aid compatibility status report for the January 1, 2009 to December 31, 2009 reporting period.¹² On September 16, 2010, the Wireless Telecommunications Bureau (WTB) referred Ztar's apparent violation of the hearing aid-compatible handset deployment requirements during the 2009 reporting period to the Bureau for investigation and possible enforcement action. On October 27, 2010, the Bureau's Spectrum Enforcement Division issued a letter of inquiry (HAC LOI)¹³ to Ztar, directing the company to submit a sworn written response to a series of questions related to its compliance with Sections 20.19(c)(3)(ii) and 20.19(d)(3)(ii). Ztar responded to the HAC LOI on November 17, 2010 (HAC LOI Response).¹⁴ In its HAC LOI Response, Ztar stated that it obtained the hearing aid compatibility rating for the handsets it offered from the handset manufacturer's hearing aid compatibility status report or from Commission records.¹⁵

4. On January 6, 2011, Ztar submitted its annual hearing aid compatibility status report for the January 1, 2010 to December 31, 2010 reporting period.¹⁶ On June 22, 2011, WTB referred Ztar's apparent violation of the hearing aid-compatible handset deployment requirements during the 2010 reporting period to the Bureau for investigation and possible enforcement action. The Bureau and Ztar entered into tolling agreements to toll the statute of limitations,¹⁷ and negotiated the terms of this Consent Decree.¹⁸

B. Customer Proprietary Network Information

5. Section 222 of the Act imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers' proprietary information.¹⁹ The Commission has issued

Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-11189 paras. 35-59 (2010).

¹² See *Ztar Mobile, Inc.* Hearing Aid Compatibility Report, Docket No. 07-250 (Jan. 11, 2010) available at http://wireless.fcc.gov/hac_documents/100317/Ztar%20Mobile,%20Inc.

¹³ See *supra* note 6.

¹⁴ See Letter from Kevin Haddad, President, Ztar Mobile, Inc., to Katherine Power, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Nov. 17, 2010).

¹⁵ *Id.* at 4.

¹⁶ *Ztar Mobile, Inc.* Hearing Aid Compatibility Report, Docket No. 07-250 (Jan. 6, 2011), http://wireless.fcc.gov/hac_documents/110210/5903418_23.PDF.

¹⁷ See, e.g., Tolling Agreement Extension, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Kevin Haddad, President, Ztar Mobile, Inc. (April 5, 2012) (on file in EB-10-SE-126).

¹⁸ We note that all of the terms of this settlement related to hearing aid compatibility compliance were agreed upon prior to the Commission's recent T-Mobile decision. See *T-Mobile Inc.*, File No. EB-10-SE-127, Notice of Apparent Liability for Forfeiture, FCC 12-39, 2012 WL 1305323 (Apr. 13, 2012) (adopting a new base forfeiture calculation methodology).

¹⁹ Section 222 of the Act, 47 U.S.C § 222, provides that: "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier." Prior to the Telecommunications Act of 1996, the Commission had established CPNI requirements applicable to the enhanced services operations of AT&T, the Bell Operating Companies (BOCs), and GTE, and the customer premises equipment (CPE) operations of AT&T and the BOCs, in the Computer II, Computer III, GTE Open Network Architecture (ONA), and BOC CPE Relief proceedings. See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8068-70, para. 7

rules implementing Section 222 of the Act.²⁰ The Commission required carriers to establish and maintain a system designed to ensure that carriers adequately protected their subscribers' CPNI. Section 64.2009(e) is one such requirement.²¹

6. In 2006, some companies, known as "data brokers," advertised the availability of records of wireless subscribers' incoming and outgoing telephone calls for a fee.²² Data brokers also advertised the availability of certain landline toll calls.²³ On April 2, 2007, the Commission strengthened its privacy rules with the release of the *EPIC CPNI Order*, which adopted additional safeguards to protect CPNI against unauthorized access and disclosure.²⁴ The *EPIC CPNI Order* responded directly to the actions of data brokers, or pretexters, to obtain unauthorized access to CPNI.²⁵ The *EPIC CPNI Order* requires that all companies subject to the CPNI Rules file annually, on or before March 1, a certification with the Commission pursuant to amended rule 47 C.F.R. § 64.2009(e).²⁶ Additionally, companies must now provide, with their certification, "an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI."²⁷

7. On September 5, 2008, the Bureau's Telecommunications Consumers Division issued a letter of inquiry²⁸ (CPNI LOI) to Ztar, directing the company to provide copies and evidence of its timely filed CPNI compliance certificate for 2007 in accordance with Section 64.2009(e) of the Rules, or an explanation as to why no certification was filed. Ztar responded to the CPNI LOI on September 18, 2008

(1998) (*CPNI Order*) (describing the Commission's privacy protections for confidential customer information in place prior to the 1996 Act).

²⁰ See *CPNI Order*. See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002); *EPIC CPNI Order*.

²¹ 47 C.F.R. § 64.2009(e).

²² See, e.g., <http://www.epic.org/privacy/iei/>.

²³ See *id.*

²⁴ *EPIC CPNI Order*, 22 FCC Rcd 6927. Specifically, pursuant to Section 64.2009(e):

A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year. 47 C.F.R. § 64.2009(e).

²⁵ *EPIC CPNI Order*, 22 FCC Rcd at 6928, para. 2.

²⁶ *Id.* at 6954, para. 53; 47 C.F.R. § 64.2009(e).

²⁷ *EPIC CPNI Order*, 22 FCC Rcd at 6953, para. 51.

²⁸ See *supra* note 6.

(CPNI LOI Response).²⁹ In its CPNI LOI Response, Ztar stated that it was unaware of the obligation to file the CPNI compliance certificate.³⁰ On February 24, 2009, the Bureau released the Omnibus Notice of Apparent Liability for Forfeiture against numerous companies, including Ztar, proposing a monetary forfeiture of twenty thousand dollars (\$20,000) for Ztar's apparent failure to comply with Section 222 of the Act, Section 64.2009(e) of the Rules, and the Commission's *EPIC CPNI Order*.³¹ Ztar responded to the *Omnibus NAL* on March 11, 2009, arguing that the proposed forfeiture should be cancelled or reduced.³² Subsequently, the Bureau and Ztar entered into settlement discussions.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

9. **Jurisdiction.** Ztar agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

10. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

11. **Termination of the Investigations.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigations. In consideration for the termination of the Investigations, Ztar agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Ztar concerning the matters that were the subject of the Investigations. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Ztar with respect to Ztar's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Ztar shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Ztar complies with the terms and conditions of the Compliance Plan

²⁹ See e-mail from Kevin Haddad, CEO, Ztar, to Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Sept. 18, 2008) (on file in EB-08-TC-6092).

³⁰ *Id.*

³¹ *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enf. Bur. 2009) (*Omnibus NAL*).

³² See Response from Kevin Haddad, CEO, Ztar, to Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Mar. 11, 2009) (on file in EB-08-TC-6092).

and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Hearing Aid Compatibility Rules and the CPNI Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Ztar agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Hearing Aid Compatibility Rules and the CPNI Rules, Ztar shall implement the following procedures:

- (a) **Operating Procedures on Hearing Aid Compatibility.** Within sixty (60) calendar days after the Effective Date, Ztar shall establish Operating Procedures that all Covered Employees must follow to help ensure Ztar's compliance with the Hearing Aid Compatibility Rules. Ztar's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Ztar offers the requisite number or percentage of hearing aid-compatible digital wireless handsets to consumers as required by the Hearing Aid Compatibility Rules. Ztar also shall develop a Compliance Checklist that describes the steps that a Covered HAC Employee must follow to ensure that the inclusion of a new handset model, or discontinuance of an existing handset offering, will not result in a violation of the Commission's digital wireless hearing aid-compatible handset deployment requirements. At a minimum, the Compliance Checklist shall require Covered HAC Employees to verify the hearing aid compatibility rating of each existing and proposed handset offering using the Commission's equipment authorization database.
- (b) **Hearing Aid Compatibility Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered HAC Employees. The Compliance Manual shall explain the Hearing Aid Compatibility Rules and set forth the Operating Procedures that Covered HAC Employees shall follow to help ensure Ztar's compliance with the Hearing Aid Compatibility Rules. Ztar shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Ztar shall distribute any revisions to the Compliance Manual promptly to all Covered HAC Employees.
- (c) **Hearing Aid Compatibility Compliance Training Program.** Ztar shall establish and implement a Compliance Training Program on compliance with the Hearing Aid Compatibility Rules and the Operating Procedures. As part of the Compliance Training Program, Covered HAC Employees shall be advised of Ztar's obligation to report any noncompliance with the Hearing Aid Compatibility Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered HAC Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered HAC Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered HAC Employee. Ztar shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (d) **CPNI Compliance Measures, Training Program, and Disciplinary Process.** Ztar agrees to take all measures necessary to achieve full compliance with the CPNI Rules. Ztar agrees that within thirty (30) calendar days after the Effective Date, Covered CPNI Employees shall be trained as to when they are and are not authorized to use CPNI. As part of the CPNI training, Covered CPNI Employees shall be advised of Ztar's obligation to report any noncompliance with the CPNI Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. Ztar further agrees to have an express disciplinary process in place for the unauthorized use of CPNI within thirty (30) calendar days after the Effective Date. Additionally, Ztar agrees to submit for each of two (2) years following the Effective Date of this Consent Decree a copy of its annual Section 64.2009(e) compliance certificate, which it is required to file annually in EB Docket 06-36. The copy of annual Section 64.2009(e) compliance certificate shall be sent to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C244, Washington, D.C. 20554, and must reference File No. EB-08-TC-6092. Ztar must also send an electronic copy of its certification to other Telecommunications Consumers Division staff as directed by the Telecommunications Consumers Division Chief.

14. **Reporting Noncompliance.** Ztar shall report any noncompliance with the Hearing Aid Compatibility Rules, the CPNI Rules, or with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Ztar has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Ztar has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, D.C. 20554, and to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C244, Washington, D.C. 20554, with a copy submitted electronically to Katherine Power at Katherine.Power@fcc.gov, Pamela Hairston at Pamela.Hairston@fcc.gov, and Kimberly Wild at Kimberly.Wild@fcc.gov.

15. **Compliance Reports.** Ztar shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of Ztar's efforts during the relevant period to comply with the terms and conditions of this Consent Decree, the Hearing Aid Compatibility Rules, and the CPNI Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Ztar, stating that the Compliance Officer has personal knowledge that Ztar (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; (iii) has taken necessary measures to achieve full compliance with the CPNI Rules; and (iv) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 14 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the

Rules³³ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Ztar, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Ztar has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Ztar has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, D.C. 20554 and to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C244, Washington, D.C. 20554, with a copy submitted electronically to Katherine Power at Katherine.Power@fcc.gov, Pamela Hairston at Pamela.Hairston@fcc.gov and Kimberly Wild at Kimberly.Wild@fcc.gov.

16. **Termination Date.** The obligations set forth in paragraphs 12 through 15 of this Consent Decree shall expire twenty-four (24) months after the Effective Date, except that the requirements of paragraph 13(d) shall expire on March 1, 2014 or upon the termination of the certification requirement set forth in Section 64.2009(e), whichever is earlier.

17. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Ztar or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Ztar with the Communications Laws.

18. **Voluntary Contribution.** Ztar agrees that it will make a voluntary contribution to the United States Treasury in the amount of Thirty-Three Thousand Six Hundred Dollars (\$33,600) (Voluntary Contribution), such Voluntary Contribution to be made in installments (each an Installment Payment). The first Installment Payment in the amount of Nine Thousand Six Hundred Dollars (\$9,600) is due within thirty (30) calendar days after the Effective Date. The balance of the Voluntary Contribution will be made in twenty-four consecutive monthly payments of One Thousand Dollars (\$1,000) payable on the first day of each month beginning with the second month following the Effective Date. The final payment is due on the first day of the twenty-fifth month following the Effective Date (Maturity Date). Ztar acknowledges and agrees that upon execution of this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).³⁴ Upon an Event of Default, all procedures for collection permitted by law may, at the Commission's discretion, be initiated. In addition, Ztar agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Installment Payments must be made by check or similar instrument, payable in United

³³ 47 C.F.R. § 1.16.

³⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

States Dollars to the order of the Federal Communications Commission. The payments must include the Account Number and FRN referenced in the caption to the Adopting Order. Payments by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payments by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Ztar shall also send electronic notification to Katherine Power at Katherine.Power@fcc.gov, Pamera Hairston at Pamera.Hairston@fcc.gov, Samantha Peoples at Sam.Peoples@fcc.gov, and Johnny Drake at Johnny.Drake@fcc.gov on the date each Installment Payment is made.

19. **Event of Default.** Ztar agrees that an Event of Default shall occur upon the failure by Ztar to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

20. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys’ fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Ztar.

21. **Waivers.** Ztar waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Ztar shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Ztar nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Ztar shall waive any statutory right to a trial *de novo*. Ztar hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Ztar does not expressly consent) that provision will be superseded by such Rule or Commission Order.

24. **Successors and Assigns.** Ztar agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigations. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or

legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** The individual signing this Consent Decree on behalf of Ztar represents and warrants that he is authorized by Ztar to execute this Consent Decree and to bind Ztar to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

29. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Kevin Haddad
President
Ztar Mobile, Inc.

Date